

PROPERTY CODE

TITLE 11. RESTRICTIVE COVENANTS

For expiration of this chapter, see Section 213.014.

CHAPTER 213. MODIFICATION OR TERMINATION OF RESTRICTIONS IN
CERTAIN REAL ESTATE DEVELOPMENTS BY PROPERTY OWNERS' ASSOCIATION OR
PROPERTY OWNER PETITION

Sec. 213.001. DEFINITIONS. In this chapter:

(1) "Amenity property" means real property the use of which is restricted by a dedicatory instrument to use as a golf course or country club.

(2) "Council of owners" has the meaning assigned by Section 81.002 as it relates to an existing condominium in a development.

(3) "Dedicatory instrument" means a governing instrument that:

(A) restricts amenity property to use as amenity property;

(B) designates real property in the development, other than amenity property, as a beneficiary of a restriction described by Paragraph (A); and

(C) addresses the establishment, maintenance, and operation of amenity property.

(4) "Development" means:

(A) amenity property; and

(B) all real property designated as beneficiary property in the dedicatory instrument.

(5) "Owner" means a person, or the person's personal representative, who holds record title to:

(A) a lot or parcel of real property in a development; or

(B) a unit or apartment of a condominium in the development.

(6) "Petition circulator" means a person authorized to circulate a petition under Section 213.005.

(7) "Property owners' association" means an incorporated or unincorporated association that:

(A) is designated as the representative of the owners of lots or parcels of real property in a development;

(B) has a membership primarily consisting of those owners; and

(C) manages or regulates all or part of the development for the benefit of those owners.

(8) "Restrictions" means one or more restrictive covenants contained or incorporated by reference in a properly recorded map, plat, replat, declaration, or other instrument filed in the real property records or map or plat records. The term includes any amendment or extension of the restrictions.

(9) "Restrictive covenant" means any covenant, condition, or restriction contained in a dedicatory instrument, whether mandatory, prohibitive, permissive, or administrative.

(10) "Unit owners' association" means an association of unit owners organized under Section [82.101](#) for a condominium in a development.

Added by Acts 2015, 84th Leg., R.S., Ch. 1183 (S.B. [1168](#)), Sec. 23, eff. September 1, 2015.

Sec. 213.002. FINDINGS AND PURPOSE. (a) The legislature finds that:

(1) a restriction on the use of an amenity property may create uncertainty if the owners of an amenity property are reluctant or unable to properly maintain or operate the amenity property;

(2) such uncertainty may discourage investment and negatively impact property values in the development;

(3) investors may be reluctant to or will not invest funds to revitalize an amenity property burdened with a restriction on its use;

(4) financial institutions may be reluctant to or will not provide financing to revitalize an amenity property burdened with a restriction on its use; and

(5) establishing a procedural option to allow for the modification or termination of the restriction would alleviate the uncertainty and encourage revitalization of the amenity property.

(b) The purpose of this chapter is to provide a procedural option for the modification or termination of a restriction on the use of an amenity property.

Added by Acts 2015, 84th Leg., R.S., Ch. 1183 (S.B. [1168](#)), Sec. 23, eff. September 1, 2015.

Sec. 213.003. MODIFICATION OR TERMINATION BY PETITION.

(a) Except as provided by Subsection (b), a restriction on the use of an amenity property may be modified or terminated by petition in accordance with this chapter.

(b) This chapter does not apply if:

(1) a dedicatory instrument includes a procedure to modify or terminate a restriction on the use of an amenity property on approval of the owners of less than 75 percent of, as applicable, the lots or parcels of land and units or apartments of condominiums in the development; or

(2) a restriction on the use of an amenity property may be modified or terminated under the procedures of Chapter [81](#), [82](#), [201](#), or [209](#).

Added by Acts 2015, 84th Leg., R.S., Ch. 1183 (S.B. [1168](#)), Sec. 23, eff. September 1, 2015.

Sec. 213.004. PREREQUISITES FOR CIRCULATION. A petition may not be circulated under this chapter unless:

(1) for a continuous period of at least 36 months, the amenity property has not been in operation; and

(2) if zoning regulations apply to the amenity property, the owner of the amenity property has received all required zoning approvals for any proposed redevelopment of the amenity property.

Added by Acts 2015, 84th Leg., R.S., Ch. 1183 (S.B. [1168](#)), Sec. 23, eff. September 1, 2015.

Sec. 213.005. PETITION CIRCULATOR. A petition authorized by Section [213.003](#) may be circulated by:

(1) an owner;

(2) a property owners' association that owns and

manages the amenity property; or

(3) a unit owners' association or council of owners that owns and manages the amenity property.

Added by Acts 2015, 84th Leg., R.S., Ch. 1183 (S.B. [1168](#)), Sec. 23, eff. September 1, 2015.

Sec. 213.006. CONTENTS OF PETITION. (a) The petition must include all relevant information about the proposed modification or termination, including:

(1) the name of the development, if any;

(2) the name of the amenity property, if any;

(3) the recording information of the restriction to be modified or terminated;

(4) the text of the restriction subject to modification or termination;

(5) the text of the restriction as modified or terminated; and

(6) a comparison of the original language of the restriction and the restriction as modified or terminated, showing any insertion and deletion of language or punctuation.

(b) The petition must state:

(1) reasonable times and dates the petition circulator will be available at a location in the development to receive a signed statement required by Section [213.008](#);

(2) a mailing address, e-mail address, and facsimile number to which a signed statement may be delivered; and

(3) the date by which a signed statement must be received to be counted.

Added by Acts 2015, 84th Leg., R.S., Ch. 1183 (S.B. [1168](#)), Sec. 23, eff. September 1, 2015.

Sec. 213.007. CIRCULATION PROCEDURE. (a) A petition circulator shall deliver a copy of the petition to:

(1) all owners of:

(A) each lot or parcel of real property in the development; and

(B) each unit or apartment of each condominium,

if any, in the development; and

(2) each property owners' association, unit owners' association, and council of owners in the development.

(b) The petition circulator may deliver a copy of the petition in any reasonable manner, including:

(1) by regular mail or certified mail, return receipt requested, to the last known address of the owners or entities described by Subsections (a)(1) and (2);

(2) personal delivery to the owners or entities described by Subsections (a)(1) and (2); or

(3) at a regular meeting of a property owners' association, unit owners' association, or council of owners.

(c) If the petition circulator acts in good faith in determining ownership and delivering copies of the petition as required by this section, an owner's lack of receipt of a copy of the petition does not affect the application of a modification or termination of a restriction under this chapter to the amenity property.

Added by Acts 2015, 84th Leg., R.S., Ch. 1183 (S.B. [1168](#)), Sec. 23, eff. September 1, 2015.

Sec. 213.008. VOTE ON PROPOSAL. (a) The modification or termination of the restriction is adopted if the owners of at least 75 percent of the total number, as applicable, of the lots or parcels of land and the units or apartments of condominiums in the development, including the owner of the amenity property, vote in favor of the modification or termination of the restriction.

(b) An owner may cast a vote only by delivering to the petition circulator in accordance with Section [213.009](#) a signed statement that includes:

(1) the owner's name, the legal description or street address of the owner's property, and the owner's mailing address;

(2) a statement that the owner holds record title to the property;

(3) if more than one person owns an interest in the property, the name and mailing address of each co-owner; and

(4) a statement indicating whether the owner is in

favor of or against the modification or termination proposed by the petition.

(c) An owner may vote only in favor of or against the modification or termination as proposed in the petition.

(d) If more than one person owns an interest in a lot or parcel of land or a unit or apartment of a condominium, the owners may cast only one vote for that lot, parcel, unit, or apartment. Except as otherwise provided by this subsection, the vote of multiple owners in favor of or against the modification or termination may be reflected by the signatures of a majority of the co-owners who return a signed statement. The vote of owners who are married may be reflected by the signature of only one of those owners.

(e) A person whose only property interest in a lot or parcel of land or unit or apartment of a condominium is that of a contract purchaser, lienholder, or mineral interest holder may not cast a vote for that property under this chapter.

(f) A vote may be counted only if the vote is received before the deadline stated in the petition as required by Section [213.006\(b\)](#).

(g) The signed statement of an owner conclusively establishes that:

(1) the petition was received by the owner in accordance with Section [213.007](#); and

(2) the statement accurately reflects the vote of the owner.

Added by Acts 2015, 84th Leg., R.S., Ch. 1183 (S.B. [1168](#)), Sec. 23, eff. September 1, 2015.

Sec. 213.009. DELIVERY OF SIGNED STATEMENT. (a) The petition circulator must accept a signed statement described by Section [213.008](#) that is delivered:

(1) in person under Section [213.006\(b\)](#) or otherwise;

(2) by first class mail to an address stated in the petition;

(3) by e-mail to an address stated in the petition; or

(4) by facsimile to a facsimile number stated in the

petition.

(b) This section supersedes any contrary provision in a dedicatory instrument.

Added by Acts 2015, 84th Leg., R.S., Ch. 1183 (S.B. [1168](#)), Sec. 23, eff. September 1, 2015.

Sec. 213.010. CERTIFICATION OF RESULTS BY RECORDED AFFIDAVIT. (a) The petition circulator shall certify the result of the votes by filing an affidavit with the county clerk of the county in which the restriction modified or terminated is recorded.

(b) The affidavit required by Subsection (a) must state:

(1) the name of the development, if any;

(2) the name of the amenity property, if any;

(3) the recording information of the restriction that was modified or terminated;

(4) the text of the restriction before modification or termination;

(5) the text of the restriction as modified or terminated;

(6) the number of votes in favor of and against the proposed modification or termination;

(7) the name and address of the petition circulator; and

(8) the name, address, and telephone number of the person maintaining the documents in accordance with Section [213.013](#).

(c) The petition circulator must affirm in the affidavit that the petition was delivered in accordance with Section [213.007](#).

Added by Acts 2015, 84th Leg., R.S., Ch. 1183 (S.B. [1168](#)), Sec. 23, eff. September 1, 2015.

Sec. 213.011. NOTICE. (a) The recording of the affidavit required by Section [213.010](#) constitutes notice that the restriction is modified or terminated.

(b) Notwithstanding Subsection (a), the petition circulator must deliver to each person who resides within 200 feet of the boundary of the amenity property a copy of the affidavit. The

affidavit may be delivered by regular mail, by certified mail, return receipt requested, or by personal delivery.

Added by Acts 2015, 84th Leg., R.S., Ch. 1183 (S.B. [1168](#)), Sec. 23, eff. September 1, 2015.

Sec. 213.012. EFFECTIVE DATE OF MODIFICATION OR TERMINATION. The modification or termination of the restriction takes effect on the later of:

(1) the date the affidavit required by Section [213.010](#) is filed with the county clerk; or

(2) the date, if any, specified as the effective date in the petition.

Added by Acts 2015, 84th Leg., R.S., Ch. 1183 (S.B. [1168](#)), Sec. 23, eff. September 1, 2015.

Sec. 213.013. DOCUMENTATION AVAILABLE. At least one year after the date the affidavit is filed with the county clerk, the petition circulator shall make available for inspection and copying the original petition, the signed statements described by Section [213.008](#), and the affidavit required by Section [213.010](#).

Added by Acts 2015, 84th Leg., R.S., Ch. 1183 (S.B. [1168](#)), Sec. 23, eff. September 1, 2015.

Sec. 213.014. EXPIRATION. This chapter expires September 1, 2021.

Added by Acts 2015, 84th Leg., R.S., Ch. 1183 (S.B. [1168](#)), Sec. 23, eff. September 1, 2015.